

SUPREME COURT OF GEORGIA

Rogers v. State, 276 Ga. 67

575 S.E.2d 879 (2003) · No. S02A1310 · Decided January 13, 2003

SUMMARY

The Supreme Court of Georgia held that a defendant tried for a capital crime before July 1, 1988, could not waive a Fleming hearing on mental retardation once sufficient credible evidence created a jury issue. The court reversed and remanded because the trial court improperly accepted Rogers’s waiver and failed to conduct the required jury trial. Justice Carley dissented, concluding that Rogers knowingly and voluntarily waived the jury trial.

CASE DETAILS

|                       |                                                                                                                                                                        |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                                                                                               |
| WRITING FOR THE COURT | Hunstein, Justice; Carley, Justice; All other Justices                                                                                                                 |
| JURISDICTION          | Georgia                                                                                                                                                                |
| DECIDED               | January 13, 2003                                                                                                                                                       |
| DOCKET                | S02A1310                                                                                                                                                               |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                  |
| PROCEDURAL POSTURE    | Appeal from an order of the trial court finding that Rogers knowingly and voluntarily waived a jury trial on whether he was mentally retarded in a Fleming proceeding. |
| STANDARD OF REVIEW    | The Supreme Court reviewed the trial court's legal determination that Rogers could waive the Fleming jury trial.                                                       |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Georgia                                                                                                         |
| PARTIES               | James Rogers v. The State                                                                                                                                              |

TOPICS

- habeas corpus
- state post-conviction relief
- criminal procedure
- sentencing
- cruel and unusual punishment

PRACTICE AREAS

- criminal law
- post-conviction litigation
- death penalty

QUESTIONS PRESENTED

1. Whether a defendant tried for a capital crime before July 1, 1988 may waive a Fleming jury trial after a habeas court has found sufficient credible evidence of mental retardation to create a genuine issue for a jury.
2. Whether the trial court could resolve the mental-retardation issue by accepting the waiver and finding that Rogers was not mentally retarded.

## HOLDINGS

1. Once a habeas corpus court finds that a petitioner has presented sufficient credible evidence of mental retardation to create an issue for a jury, the petitioner may not waive the required Fleming jury trial.

## KEY QUOTATIONS

*“Once a habeas corpus court finds a petitioner has adduced sufficient credible evidence of mental retardation to create an issue for a jury, it is the duty of the trial court to conduct a jury trial on the issue of mental retardation pursuant to the procedures established in Fleming.”* (276 Ga. at 70; 575 S.E.2d at 882)

*“At such point in the proceedings, the issue is no longer subject to waiver by a petitioner.”* (276 Ga. at 69; 575 S.E.2d at 881)

## FACTUAL BACKGROUND

Rogers was tried for a capital crime before July 1, 1988, convicted of murder and aggravated assault, and sentenced to death. During state habeas proceedings, he presented expert and other affidavits supporting a diagnosis of mental retardation, and the habeas court found a genuine issue of fact warranting a Fleming jury trial. Before the scheduled trial, Rogers repeatedly asked to dismiss the proceeding and waive the jury trial, which the trial court accepted.

## PROCEDURAL HISTORY

Rogers was convicted of murder and aggravated assault and sentenced to death after a second trial. In state habeas proceedings, the habeas court found sufficient credible evidence to create a genuine issue regarding mental retardation and granted a writ for a Fleming trial. The trial court accepted Rogers's waiver of the requested jury trial and dismissed the proceeding. The Supreme Court of Georgia granted an out-of-time appeal and reversed.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The trial court must conduct a jury trial on Rogers's mental retardation pursuant to the procedures established in Fleming v. Zant.

## CASES CITED

- Fleming v. Zant, 259 Ga. 687, 386 S.E.2d 339 (1989)
- Atkins v. Virginia, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002)
- Rogers v. State, 256 Ga. 139, 344 S.E.2d 644 (1986)
- Burgess v. State, 264 Ga. 777, 790(36), 450 S.E.2d 680 (1994)
- Zant v. Foster, 261 Ga. 450, 451(3), 406 S.E.2d 74 (1991)
- State v. Patillo, 262 Ga. 259, 261 n.1, 417 S.E.2d 139 (1992)
- Devier v. State, 250 Ga. 652(1), 300 S.E.2d 490 (1983)

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